

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SAM DONAGHE,

Plaintiff,

No.13-6040RJB-KLS

WES DIAZ, DARYL WEEKS, CATHI HARRIS, THE SPECIAL COMMITMENT CENTER, THE DEPARTMENT OF SOCIAL HEALTH SERVICES, HEATHER SACHA, and JOHN DOE.

Defendants.

REPORT AND RECOMMENDATION

Noted for: MARCH 7, 2014

Presently before the Court is Plaintiff's motion to dismiss this action without prejudice.

The Court considers this motion as a voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A).

Dkt. 13. Having carefully considered the motion, the Court finds that the motion should be granted and that Plaintiff's action should be dismissed without prejudice.

BACKGROUND

Plaintiff filed this action on December 5, 2013 alleging that staff at the Special Commitment Center destroyed his computer and computer equipment in violation of plaintiff's "First, Fourth, Fifth, Sixth, Eighth, and Fourteenth" Amendment rights. Dkt. 5. p. 2. Prior to the defendants answering the complaint or moving for summary judgment plaintiff has filed a "motion to withdraw action C13-6040RJB/KLS without prejudice." Dkt. 5.

DISCUSSION

1 Plaintiff has an absolute right to dismiss his action prior to an answer or summary
2 judgment being filed. *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) “When a plaintiff
3 files a notice of dismissal under 41(a)(1), that act itself ‘closes the file.’” *Samho Co. Ltd. V.
4 Sorks-Iturup*, 254 Fed. Appx 569 (9th Cir. 2007); (*citing Duke Energy Trading and Marketing,
5 LLC v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001)). The Court considers plaintiff’s motion to be
6 equivalent to a notice to dismiss and Plaintiff filed his motion prior to any answer or motion for
7 summary judgment being filed. Accordingly the Court recommends granting the motion and
8 dismissing this action without prejudice. An order from the Court is needed only because
9 plaintiff filed a motion rather than a notice of dismissal.

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11 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
12 Procedure, the parties shall have fourteen (14) days from service of this Report and
13 Recommendation to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections
14 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
15 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the
16 matter for consideration on March 7, 2014, as noted in the caption.

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18 **DATED** this 14th day of February, 2014.

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22 Karen L. Strombom
23 United States Magistrate Judge
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